UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
SAN FRANCISCO BRANCH OFFICE

DMS FACILITY SERVICES,
Respondent,

and **Case 31–CA–151920**

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 501, AFL–CIO,
Charging Party.

Celeste Hilerio Echevarria, Esq., for the General Counsel.

Daniel Adlong, Esq. (Ogletree Deakins, Nask, Smoak & Steward, P.C.) for the Respondent.

Adam Stern and *Justin Crane, Esqs. (The Meyers Law Group)* for the Charging Party.

DECISION

STATEMENT OF THE CASE

MARA-LOUISE ANZALONE, Administrative Law Judge. I heard this case on December 7 and 8, 2015, in Los Angeles, California. International Union of Operating Engineers, Local 501, AFL–CIO (Local 501, the Union or Charging Party) filed a charge on May 7, 2015, and the Regional Director for Region 31 issued a complaint on October 2, 2015 (the Complaint).[1] The General Counsel alleges that Respondent DMS Facility Services (DMS or Respondent) refused to provide information requested by the Union, in violation of Sections 8(a)(5) and (1) of the National Labor Relations Act, as amended, 29 U.S.C. sec. 151, et. seq. (the Act).

At trial, all parties were afforded the right to call, examine, and cross-examine witnesses, to present any relevant documentary evidence, to argue their respective legal positions orally, and to file post-hearing briefs.[2] On January 26, 2016, post-hearing briefs were filed by the

[1] All dates are in 2015, unless otherwise indicated.

[2] Abbreviations used in this decision are as follows: "Tr." for transcript; "GC __" for General Counsel's Exhibit; "R __" for Respondent's Exhibit; "GC Br. at __" for the General Counsel's post-hearing brief and "R Br. at __" for Respondent's post-hearing brief.

General Counsel, Respondent and Charging Party and have been carefully considered. Accordingly, based upon the entire record herein, including the post-hearing briefs and my observation of the credibility of the witnesses, I make the following:

I. FINDINGS OF FACT

A. Jurisdiction

At all times material herein, Respondent, a State of California corporation with a principal place of business located in South Pasadena, California, has been engaged in the provision of janitorial, facility engineering and landscaping services. The evidence establishes, the parties admit, and I find that, during the 12-month period immediately preceding the issuance of the instant complaint, which period is representative, Respondent, in the normal course and conduct of its above-described business operations, provided services valued in excess of $50,000 directly to customers outside the State of California. It is alleged, Respondent admits, and I find that Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and further that the Union is a labor organization within the meaning of Section 2(5) of the Act.

Based on the foregoing, I find that this dispute affects commerce and that the National Labor Relations Board (the Board) has jurisdiction of this case, pursuant to Section 10(a) of the Act.

B. Background Facts

1. Respondent's Operations

Respondent provides janitorial, building engineering services and landscaping services. The employees at issue in this case are engineers who work in Respondent's building engineering division in Southern California. They work predominately in commercial office buildings and typically are each assigned to a specific building on a full-time basis. Respondent's operations are overseen by Jeff Magann, Respondent's vice president and general manager.

Respondent contracts the services of the engineers to various property owners and managers. General Counsel's witnesses described Respondent's practices as consistent with the industry model in which contractors such as Respondent provide the labor, but their customers, the property owners and managers, are chiefly responsible for assigning and directing the work of those employees. It is undisputed that the Union is unaware of the content of Respondent's contracts with its customers.

2. Respondent's Relationship with Local 501

DMS is signatory to a multiemployer bargaining agreement, known as the "BOMA Agreement," between the Building Owners and Managers Association of Greater Los Angeles, Inc. and Local 501, which is effective from November 1, 2011 until October 31, 2016.

Michael Ulloa, an Organizer for Local 501, is responsible for representing the DMS employees covered by the BOMA Agreement. Ulloa has worked in various capacities for Local 501 and its International Union for the past 5 to 6 years.

The BOMA Agreement provides that a signatory employer agrees to recognize the Union as the representative of the signatory's employees falling within certain job classifications who perform work at buildings in Los Angeles and Orange Counties built in Los Angeles and Orange Counties after the BOMA Agreement's November 1, 2011, effective date, to the extent such recognition does not violate applicable law.[3] (See GC 3 at Article I). A signatory employer further agrees that its employees, as a condition of their employment, shall be or shall become members of the Union within a prescribed time period.

With respect to buildings already constructed as of November 1, 2011, the BOMA Agreement at its Article I, Section G(3) provides that the signatory "agrees to notify the Union in writing when the Employer begins negotiations for a contract to service, manage, or operate said buildings." (GC 3 at 4–8) The Agreement provides for voluntary recognition at such buildings; if, however, the Union fails to demand such recognition at a building prior to the signatory's Section G(3) notice, the signatory is entitled to discounted wage and pension rates for employees at the building. In effect, then, a signatory's failure to comply with the notice requirement would disqualify it for these discounted rates at the building in question.

3. The March 23 Grievance

On March 23, Ulloa filed a grievance against DMS alleging that it had violated "Article I, Section G and/or any other Article that may apply" under the BOMA Agreement (the March 23 grievance). (GC 4) The March 23 grievance asserts that Respondent is in violation of the BOMA Agreement in that it is refusing to recognize Local 501 at all DMS locations in Los Angeles and Orange Counties. As Ulloa explained, another purpose of the grievance is to police the contract's Section (G)(3) notice requirement, whereby Respondent agreed to notify the Union in writing of its commencement of negotiations for any contract to service, manage or operate new buildings.

Respondent, within 3 days of receiving the March 23 grievance, challenged the Union's interpretation of the BOMA Agreement, and specifically whether it, in Respondent's terminology, applied to "non-BOMA job locations." (GC 5) The March 23 grievance is currently pending arbitration.

While there is currently a dispute over which buildings are covered by the BOMA Agreement, it is undisputed that, during the relevant time period, Respondent has recognized the Union as the collective-bargaining representative of its employees at seven locations.[4] For the

[3] Those positions are: Chief Engineer, Chief Operating Engineer, Assistant Chief Engineer, Lead Engineer, One-Man Plant, Certified Engineer, Non-Certified Engineer, Apprentice Engineer and Maintenance Attendant. See GC 3 at 19–20.

[4] These locations (in California) are: 10889 Wilshire Blvd., Los Angeles; 475 Anton Blvd., Costa Mesa; 300 Corporate Pointe, Culver City; 700 North Alameda, Los Angeles; 1500 Quail St., Newport Beach; 345 Foothill Rd., Beverly Hills; and 600 Wilshire Blvd., Los Angeles. GC 1(f) at ¶ 6.

purpose of the foregoing analysis, I find that the Unit, as described in the BOMA Agreement (regardless of whether it is ultimately found to encompass additional locations within Los Angeles and Orange Counties), is appropriate for collective bargaining within the meaning of Section 9(b) of the Act, and that the Union has been at all times material the exclusive representative of employees in the Unit for purposes of collective bargaining.

C. The Union's Information Request

The facts of this matter are not significantly in dispute and fall within two general time periods: March–May and August–September.

1. March through May

One day after filing the March 23 grievance, Ulloa sent Magann a request (the March 24 request) seeking several categories of information, each of which he asserted was necessary for the Union to prepare for the grievance, as well as "for contract administration purposes." The March 24 request sought, among other things, the following information:

> 8. Copies of audits and/or annual reports performed at each job location that include all man hours for engineering services at each location.
>
> 10. Copies of all Contracts between DMS and their customers, suppliers, and contractors.
>
> 12. Any and all Customer Lists including company names, address, phone number and contact person.
>
> 13. Copies of all employee evaluations including the names and phone numbers of the supervisors that performed said evaluations.

(GC 6) This letter additionally stated that, unless otherwise indicated, it should be construed as requesting information for the past five years and being "limited to bargaining unit employees covered by the [BOMA] Agreement." Id.

Magann responded 3 days later. His response to the request for contracts and customer lists (Items 10 and 12, above) was to state, in each case: "***Confidential business information***." (GC 7) In response to the request for audits and/or annual reports, Magann asked for clarification of what those terms meant, and further inquired "***For what time period?***" In response to the Union's request for employee evaluations and contact information for the supervisors who had performed them, Magann again claimed not to know the time period for which the information was requested, and further asked "***Which phone numbers***?"[5] and "***What is the relevance to the CBA***?" Id. According to Magann, he was aware at the time that DMS did not perform written employee evaluations.

[5] Although this was not clarified at hearing, it is presumed that Respondent was asking the Union whether the request was for business or personal phone numbers.

On April 9, Ulloa replied. In response to Magann's request for clarification of the terms "audits and/or annual reports," Ulloa reiterated that the request was for five years' worth of records and provided a sample audit report.[6] He further suggested that, to the extent that Respondent believed this request to be overly burdensome in terms of time or expense, the Union would make individuals available to perform a hand search of Respondent's records. Id. In response to Respondent's request for relevance of employee evaluations to the administration of the BOMA Agreement, the Union cited numerous sections of that agreement, including those dealing with recognition, grievances and arbitration.

Ulloa also addressed the requests for customer contracts and lists, stating:

> The written agreements between DMA and their customers are the foundation that develops and influences all terms and conditions of the bargaining unit. These agreements illustrate all the duties of our members. Failure to fulfill the duties that are written out in said agreements could lead to the discipline and dismissal of our members. Therefore, these contracts go to the core of the employer-employee relations and are not confidential business information.

(GC 8) Regarding the request for customer lists, Ulloa stated:

> These Customer Lists influence and form the day to day operations of the employees that the Union Represents. These Customers act as agents of DMS, directing represented employees in their daily duties. Failure to fulfill any directives could lead to the discipline and dismissal of a represented employee.

Accordingly, Ulloa asserted, these documents also "go to the core of employer-employee relations and are not confidential business information." Id.

On April 15, Magann responded, appearing to make certain counter-offers. With respect to the requested audit and/or annual reports, Respondent stated, "Employer counter 2 years instead of 5. Employer will provide by 05/05/2015."[7] With respect to employee evaluations, Magann made the same response, adding that it would provide "work phone numbers" for the supervisors at issue. (GC 9) Regarding the contracts and customer lists, however, Respondent expanded only slightly on its prior position, stating that these constituted "proprietary information," that "[u]nion members are employed under the provisions of their applicable CBA and not customer contracts" and finally that "customers do not act as agents for DMS." Id.

It is undisputed that Respondent did not, in fact, provide any audit and/or annual reports or employee evaluations by May 5. On May 7, the Union filed the unfair labor practice charge

[6] See GC 8 at 5–14.

[7] Although Ulloa testified that, by the April 9 letter, *he* had narrowed this request to two years instead of five, this is not borne out by the record evidence. See GC 8. Based on the record as a whole, I believe he did not deliberately misrepresent the facts in this regard, but rather got his April 9 letter confused with Respondent's "counter."

underlying this case. On May 18, Respondent provided certain documents to the Union, but these did not contain any of the requested information at issue in this case.[8]

A few days later, Ulloa and Magann discussed the Union's information request at a Step II meeting regarding the March 23 grievance.[9] Magann asked Ulloa how things stood with the request; Ulloa responded that he had not finished reviewing the documents Respondent had provided, but was sure that there was "still some outstanding information" and that therefore the Union considered Respondent's response incomplete. (Tr. 80–81) While there was discussion of other, then-outstanding information requests, Ulloa did not mention the specific requests at issue here.

2. August through September

On August 20, nearly 3 months following the Step II grievance meeting, Ulloa emailed Magann that there were still "more than a few items that are outstanding in the Request for Information." With respect to the requests at issue here, he stated as follows:

> 7. DMS has refused to [provide] all yearly audits – we provided the employer with an example.
>
> 9. DMS has refused to provide any copies of contracts between DMS and their Customers, Suppliers, and Contractors. Again the written agreements between DMA and their customers are the foundation that develops and maintains and influences all the terms and conditions of employment of every rank and file employee covered under the BOMA CBA[.]
>
> 11. DMS has refused to provide any Customer List (All property managers and their team).
>
> 12. DMS has refused to provide any employee evaluations.

(GC 12)

Six days later, Magann emailed his response, stating that Respondent was "evaluating" the request and would respond by the end of the week. Id. Two days later, on August 28, he sent Ulloa another email, stating, "[t]his is to confirm that DMS does not have evaluations (#12) for any bargaining unit members [] as requested in the April 9, 2015 letter." (GC 13) When asked at hearing why it took him until this date to inform the Union that there were no documents responsive to this request, Magann responded, "[i]t was a very long process going through the information request. We went back and forth on quite a few things." (Tr. 292)

[8] Respondent did provide the Union with a copy of an audit on May 18, but this was an audit of the Union's pension fund prepared by a certified public accountant. GC 10, 16.

[9] The facts regarding this meeting are based on the unrebutted testimony of Ulloa, who attended along with two additional Union representatives. Present for Respondent was Magann, who did not testify about the meeting, and an individual who described himself as a consultant, who did not testify.

Magann then stated, "[a]ttached you will find the Audit Reports for the past two (2) years (#7) for the Local 501 represented employees." (GC 13) What was attached appear to be nine reports. Six of these reports took the form of the sample the Union had provided; of these, however, five were dated prior to the requested time period and one was undated. Also attached to Magann's email were two "inspection reports" from a single location, as well as a "facility audit sheet" from another location. (See GC 17)

On September 4, Ulloa emailed Magann, protesting that DMS had acted in bad faith in providing the audit reports on August 28, in that those reports related only to three locations; the Union's position, he explained, was that the BOMA Agreement applied to all buildings within Los Angeles and Orange counties constructed as of its effective date. Ulloa also asked Magann to confirm that, based on the Union's statement of the scope of coverage of the BOMA Agreement, that there existed no written employee evaluations. Id.

Finally, with respect to the information claimed by Respondent to be confidential, Ulloa reiterated the Union's need for the documents. With respect to Respondent's contracts, in addition to its previous argument that the requirements of these contracts impacted Unit employees' working conditions, Ulloa added that the contracts would assist the Union in policing Section G(3)'s requirement that DMS notify the Union when it began contract negotiations for a new building. He further explained that the contracts "could get at the core and understanding of the Joint Employer relationship between [DMA] and their Property Managers." Id. at 9. Regarding the request for customer lists, Ulloa repeated his argument that DMS' customers acted as *de facto* supervisors of DMS employees, and added a similar reference to the Union's need to police the Section G(3) notice requirement. Id.

On September 15, 2015, Magann responded, stating that DMS was willing to provide documents related to buildings where the Union had members, "but not every single location where DMS provides services in Los Angeles and Orange counties," because "both DMS and Local 501 know that the union's membership is not so wide spread." (GC 14 at 4) Magann made no further specific reference to the scope of the audit documents provided, but later testified that he had provided all of the audit reports Respondent had at the time (at locations at which Respondent recognized Local 501), because the audits were "not done every year," but only "by request" or "by contract." (Tr. 238–39)

With respect to the request for employee evaluations, Magann now did an "about face," informing Ulloa that Respondent's "personnel files would contain employee evaluations, if any exist," and that the Union would be permitted to examine such files "for buildings where Local 501 represents members" at a mutually convenient time.[10] With respect to supervisors' phone numbers, Magann stated DMS would not produce such information, as the DMS supervisors were not Unit employees and their contact information was not necessary for the Union's administration of the BOMA Agreement. (GC 14 at 6)

[10] At hearing, Magann offered no explanation of the circumstances that led to him offering this written invitation.

Finally, with respect to Respondent's contracts and customer lists, Magann did not respond directly to Ulloa's specific arguments or his reference to Article 1, Section G(3), but only stated that the Union's "general arguments" for relevance were insufficient to oblige Respondent to produce the documents. Id. at 5.

Two days later, Ulloa emailed Magann, reiterating the Union's position that the BOMA Agreement, by its terms, covered all buildings in Los Angeles and Orange counties that exist "or will exist during the duration of the contract." He also referred to the contract's union security clause, which required that all DMS employees be members of Local 501. Id. at 2. Therefore, he explained, all DMS employees within the BOMA job classifications "are to be members in good standing[,] will remain members and all those that are not…will become members." Id. at 3. In response, Magann emailed the following: "Thank you for your response. For the same reasons discussed [in the September 15 email], we respectfully disagree with your reading of the contract." Id. at 1.

D. Respondent's Asserted Confidentiality Concerns

According to Magann, Respondent's customer contracts contain confidential financial information in the form of payment and billing terms, pricing information for Respondent's services, and insurance information. He testified that, in the hands of DMS' competitors, this information would undermine DMS' market position and allow its competition to undercut its pricing. Magann further testified that DMS' contracts "quite often" contain material from DMS proposals to customers, in the form of "operational plans" developed for the customer that set forth how DMS plans to "approach the work" performed under the contract. This proprietary business information, he explained, sets DMS apart from its competitors and therefore requires protection from them.

Finally, Magann testified that Respondent's customer contracts contain confidential information regarding its customers' ownership; "quite a few" of these contracts, according to him, require that the agreement itself be kept confidential, out of the customers' concern to keep their ownership information confidential. (Tr. 254) Though no witness testified on behalf of any of Respondent's customers, Magann opined that "ownership information may be something that they want to keep exclusive and to not have in the hands of the Union or our competition." (Tr. 254)

DMS also maintains customer lists, which contain the location of customers' offices, as well direct contact information, such as cell phone numbers. According to Magann, DMS treats such information as confidential because a third party could use it to solicit DMS' customers "for any reason," including, in the case of DMS' competitors, for business. (Tr. 256–57)

No evidence was offered regarding Respondent's policies or practices regarding safeguarding or otherwise protecting its allegedly confidential information.

E. Local 501's Asserted Joint-Employer Concerns

According to the General Counsel, the Union's request for Respondent's customer contracts and lists was based in part on its concern that property managers employed by Respondent's customers are the de facto supervisors and managers of the Unit employees.

In this regard, Counsel for the General Counsel presented evidence, unrebutted by Respondent, that the engineers only see Respondent's own managers "maybe once a month" and that this would occur if a property manager wanted to discipline an employee or escort a worker off of its property. While the Union is admittedly unaware of the contents of Respondent's customer contracts, Ulloa testified that building owners and managers in the industry are known at times to reserve, in their contracts, the right to discharge specific employees of contractors such as Respondent. By contrast, General Manager Magann testified that DMS is responsible for administering employee discipline to Unit members. However, according to Ulloa, it is common in Respondent's industry for a property manager (i.e., customer) to instigate such discipline, and he was aware of instances (outside of DMS) in which a property manager's taking issue with the performance of an individual engineer ultimately led either to the engineer's discipline or removal from the property.

Paul Williams, a former DMS assistant chief engineer, testified that during the 3 years he worked for Respondent (between 2011 and 2014), he interacted with a DMS manager approximately 5 percent of the time, and that he could go for an entire year without any such interaction. As Williams explained, he instead reported to DMS Chief Engineer Brian McCarthy, as well as to the facility manager for the DMS customer at whose building he was assigned. Williams described having weekly interaction with the facility manager, who would directly assign him work to distribute among the DMS employees. He further testified that he was required to notify the facility manager (as well as McCarthy) if he were working overtime, calling in sick, or otherwise planning to be absent.

II. ANALYSIS

A. Credibility

The key aspects of my factual findings above incorporate the credibility determinations I have made after carefully considering the record in its entirety. The testimony concerning the material events regarding Charging Party's information request and Respondent's response thereto contain certain conflicts. As described in more detail, infra, evidence contradicting the findings, particularly certain testimony from Respondent's sole witness, Magann, has been considered but has not been credited.

I based my credibility resolutions on consideration of a witness' opportunity to be familiar with the subjects covered by the testimony given; established or admitted facts; the impact of bias on the witness' testimony; the quality of the witness' recollection; testimonial consistency; the presence or absence of corroboration; the strength of rebuttal evidence, if any; the weight of the evidence; and witness demeanor while testifying and the form of questions eliciting responses. Credibility findings need not be all-or-nothing propositions, and it is

common for a fact finder to credit some, but not all, of a witness' testimony. *Daikichi Sushi,* 335 NLRB 622, 622 (2001).

My credibility findings are generally incorporated into the findings of fact set forth above. More detailed discussions of specific credibility resolutions appear here in those situations that I perceived to be of particular significance.

B. The Parties' Positions

The Complaint alleges that, since about April 9, Respondent has unlawfully failed to provide the following information requested by the Union on that date:

> (a) Copies of, or make readily available, all audits and/or annual reports performed at each job location that include all man hours for engineering services at each location for the past two years.
>
> (b) Copies of all Contracts between DMS and [its] customers.
>
> (c) Any and all customer lists including company names, address, phone number and contact person.
>
> (d) Copies of all employee evaluations including the names of the supervisors that performed said evaluations for the past five years.[11]

The Complaint additionally asserts that Charging Party reiterated its request at the Step II grievance meeting held on or around August 28.

According to the General Counsel, the Union is entitled to the requested information relating to both the locations who work at the DMS-contracted buildings at which Respondent recognizes the Union (the "recognized locations"), as well as all other buildings at which Respondent employs individuals in Unit job classifications throughout the counties of Los Angeles and Orange (the "disputed locations"). At hearing, the General Counsel stated that it considered the safety audits and reports, as well as the employee evaluations (Items (a) and (d), supra), to be presumptively relevant with respect to employees working at one of the recognized locations. With respect to the disputed locations, the General Counsel generally argues, the requested information is necessary for the Union to process the March 23 grievance over whether Respondent has violated Article 1, Section G of the BOMA Agreement. By its post-hearing brief, the General Counsel also argues that Respondent unreasonably delayed in providing safety audits on August 28, as well as in its response to the Union's request for employee evaluations. (GC Br. at 25–26)

Respondent, by contrast, asserts that it responded fully to the Union's request for safety audits and reports related to recognized locations, does not have any employee evaluations and is

[11] At the onset of the hearing in this matter, General Counsel, without objection, moved to amend the characterization of these categories of information as set forth in the Complaint, and this amendment was granted.

not obligated to produce any of the remaining information sought. With respect to the disputed locations in particular, Respondent argues that the General Counsel has failed to show how information relating to employees working at such locations is necessary for the Union to properly represent its members. Respondent further argues that the request for information is premature in that an arbitrator has not yet ruled that Respondent has violated any obligation it may have under the BOMA Agreement, and that until that time, Local 501's statutory right to the information will remain unknown. To find otherwise, Respondent argues, would necessitate the Board "choosing" the Union's interpretation of the BOMA Agreement over Respondent's. Finally, Respondent asserts that it is privileged not to provide its customer contracts and lists because they contain confidential and/or proprietary information.

C. The Applicable Law

Under Sections 8(a)(5) and 8(d) of the Act, an employer is required to provide a union with relevant information needed to enable it to properly perform its statutory duties and responsibilities in representing employees. *NLRB v. Acme Industrial Co*., 385 U.S. 432, 435–36 (1967). Following an appropriate request, and limited only by considerations of relevancy, the obligation arises from the operation of the Act itself. *Ellsworth Sheet Metal*, 224 NLRB 1506 (1976). Information requests pertaining to terms and conditions of bargaining unit employees are "presumptively relevant," and the employer must provide the requested information. *Disneyland Park*, 350 NLRB 1256, 1257 (2007).

Where, by contrast, a union seeks information concerning employees outside of the bargaining unit, or where it seeks information not clearly necessary to its performance as a representative, it is the union's burden to demonstrate relevance. Id.; see also *San Diego Newspaper Guild v. NLRB*, 548 F.2d 863, 867 (9th Cir. 1977). The standard for relevance is articulated as a "liberal discovery type standard." *Loral Electronic Systems*, 253 NLRB 851, 854 (1980) (internal citations omitted). The burden to establish relevance is not an exceptionally difficult one, requiring only that the desired information be useful to the union in carrying out its statutory duties and responsibilities. *Castle Hill Healthcare Center*, 355 NLRB 1156, 1179 (2010); *Shoppers Food Warehouse Corp*., 315 NLRB 258, 259 (1994).

A union satisfies this burden when it demonstrates a reasonable belief, supported by objective evidence, that the information requested is relevant. *Shoppers Food Warehouse*, 315 NLRB at 259 (citation omitted). Potential or probable relevance is sufficient to trigger an employer's obligation to provide information. *Reiss Viking*, 312 NLRB 622, 625 (1993) (noting the union's request must be based on objective factors and that "hearsay" reports are sufficient to show the union has some basis for making its requests). It is worth noting, however, that the union's explanation of relevance "must be made with some precision" and there must be more than a bare assertion that the union needs the information. *Disneyland Park*, 350 NLRB at 1258 fn.5; see *Detroit Edison Co. v. NLRB*, 440 U.S. 301, 314 (1979).

Once the union has proven the information it requested is relevant to its statutory obligations of performing its duties as the bargaining unit representative, "the employer has the burden to prove a lack of relevance . . . or to provide adequate reasons as to why [it] cannot, in good faith, supply such information." *Calmat Co.*, 331 NLRB 1084, 1095 (2000) (quoting *San*

Diego Newspaper Guild v. NLRB, 548 F.2d at 867). It is well established that an employer may not refuse to furnish requested information *solely* on the basis that it concerns matters outside the scope of the bargaining unit represented by the union. *Curtiss-Wright Corp., Wright Aeronautical Division v. NLRB*, 347 F.2d 61 (3d Cir. 1965), enfg. 145 NLRB 152 (1963).

D. Respondent Failed to Provide Certain Relevant Information in Violation of Sections 8(a)(5) and (1) of the Act

In this case, certain of the information sought is presumptively relevant. Specifically, with respect to Respondent's recognized locations, the safety audits and reports, as well as the employee evaluations, clearly relate to terms and conditions of employment of Unit employees. See *Detroit Newspaper Agency*, 317 NLRB 1071, 1077 (1995) (finding health and safety audit presumptively relevant); *New York Telephone Co.*, 299 NLRB 351 (1990) (finding performance appraisals presumptively relevant), enfd. 930 F.2d 1009 (2d Cir. 1991); *Columbia University*, 298 NLRB 941, 945 (1990) (finding information regarding employee job evaluation process presumptively relevant). That said, I will address the merits of the General Counsel's allegations regarding those items of information later in this decision.

With respect to the remaining categories of information sought, there is no presumption of relevance, because the information in question does not necessarily concern terms and conditions of employment for Unit employees. In particular, because the parties dispute whether the Unit encompasses employees working at Respondent's disputed locations, the Union's requests for information pertaining to such employees cannot be considered presumptively relevant. *E.I. DuPont de Nemours and Co.v. NLRB,* 744 F.2d 536, 538 (6th Cir. 1984) (where union seeks information concerning employees outside of the bargaining unit, there is no presumption of relevance and union has the burden to show relevance), enfg. 264 NLRB 48 (1982).

As set forth below, with the exception of its request for employee evaluations, I find that the Union has met its burden in demonstrating the relevance of the requested information related to the disputed locations, and I further find that Respondent has not proven a lack of relevance for this information. I further find that the Union has not demonstrated the relevance of Respondent's customer contracts or lists related to the recognized locations, nor has it demonstrated the relevance of the employee evaluations for the disputed locations. Finally, I find that Respondent's asserted confidentiality defense lacks merit.

1. The Customer Contracts and Lists

General Counsel offers two rationales as to why Local 501 is entitled to Respondent's customer contracts and lists. First, insofar as the recognized locations are concerned, the General Counsel argues that control over the Unit employees' terms and conditions of employment by Respondent's customers renders their identities and contractual terms relevant to the Union's representational functions. Specifically, with respect to the contracts, it is asserted that these documents may reserve to Respondent's customers such control and that, in any event, the contracts—to the extent that they obligate Respondent to provide services—could be relied upon to discipline Unit employees. Finally, with respect to the disputed locations, the General

Counsel argues that the contracts and lists would assist the Union in policing Respondent's obligation to recognize the Union and to provide notice of the commencement of negotiations to service new buildings.

a. Respondent Was Not Obligated to Provide Its Customer Contracts and Lists for the Recognized Locations

Board law is clear that a union must generally establish the relevancy of information regarding single, joint employer or alter ego relationships in which an employer is involved. While the Union is not required to prove the existence of such a relationship, the union must have an "objective factual basis for believing" that the relationship exists. *Consolidation Coal Co.*, 307 NLRB 69, 72 (1992) (citing *Bohemia, Inc.*, 272 NLRB 1128 (1984), *Maben Energy Corp.*, 295 NLRB 149 (1989)). See also *Shoppers Food Warehouse.,* 315 NLRB 258; *Knappton Maritime Corp*., 292 NLRB 236 (1988); *M. Scher & Son*, 286 NLRB 688 (1987); *Walter N. Yoder & Sons v. NLRB*, 754 F.2d 531, 536 (4th Cir. 1985), enfg. 270 NLRB 652 (1984). Where, for example, a union is informed that certain of its members will be paid by an outside entity for their participation in a new training program, the Board has found the union entitled to information that would shed light on the identity of that third party and whether, in fact, it would have the right to direct the work of the Unit employees. See *Olean General Hospital*, 363 NLRB No. 62, slip op. at 3 (2015).

In this case, however, there is no indication that Local 501, at the time it requested the customer contracts and lists, had an objective factual basis for its concerns regarding control by property managers over the terms and conditions of employment of the Unit employees. While the General Counsel presented the testimony of a one-time DMS employee concerning his interaction with customers' property managers (and corresponding lack of interaction with DMS managers), there was no showing that any of his observations were known or considered by the Union in formulating its information requests.[12] Likewise, although Ulloa testified that he was aware of a DMS employee whose wage rate had been changed at the request of a property manager, there is no evidence that he knew and considered this when making the Union's information request.[13]

Instead, the evidence shows that, at the time of its information request, the Union's basis for believing that Respondent's customers may control terms and conditions of employment for Unit employees was limited to Ulloa's understanding regarding the operation of industry in which Respondent operates. Likewise, its basis for believing that Respondent's customer contracts might reserve such control to Respondent's customers is based on Ulloa's belief that property owners and building managers, throughout the industry, sometimes included such reservations in their contracts. But this is the sort of mere suspicion that, alone, does not suffice

[12] For this reason, it is unnecessary to determine whether this individual's experience, who had last worked for DMS more than a year prior to the Union's information request, could have provided an objective factual basis for the requests.

[13] According to the General Counsel, Ulloa testified that "at the time he made the request for [] information, he knew that at least one of Respondent's employees had been disciplined at the request of a property manager." (GC Br. at 17) (emphasis added). In fact, Ulloa testified the employee in question was employed by a *non-DMS* signatory to the BOMA Agreement. See Tr. 177, ll.18–25, 178, ll.1–7.

to support a request for non-presumptively relevant information. *Anchor Motor Freight*, 296 NLRB 944, 948 (1989) (citation omitted). Likewise, Ulloa's suspicions that Respondent's customer contracts could potentially be used as a basis on which to discipline Unit employees is, "at best . . . a hypothetical theory" insufficient to entitle the Union to these documents. Id.

Accordingly, I find that, with respect to the recognized locations, Respondent's customer contracts and lists have not been shown to be relevant and necessary to Local 501's performance of its duties as the exclusive collective-bargaining representative of its members.

b. Respondent Failed to Provide Customer Contracts and Lists For the Disputed Locations, in Violation of Sections 8(a)(5) and (1) of the Act

I do find, however, that the customer contracts and lists relating to Respondent's disputed locations are relevant and necessary to the Union's performance of its duties as the representative of the unit employees. It is well settled that information requested will be considered relevant when it would assist the Union in evaluating the merits of a grievance and the propriety of pursuing that grievance to arbitration. *United Technologies Corp.,* 274 NLRB 504, 508 (1985).

In *NLRB v. Acme Industrial Co.*, the Supreme Court made it clear that an employer's duty to furnish requested information is an obligation which stands "in aid of the arbitral process," in that it permits a union to evaluate grievances and sift out unmeritorious claims. 385 U.S. at 437–38. Hence, an employer is precluded from withholding relevant information so as to require a union to proceed with a grievance under conditions amounting to no more than "a game of blind man's bluff." Id. at 438, fn.8. Finally, the Board is not required to wait for an arbitrator's determination of the relevance of requested information before it can enforce statutory rights under Section 8(a)(5). Id.

The Board, in determining that information is producible, does not pass on the merits of a grievance underlying an information request. See *Endo Painting Service,* 360 NLRB No. 61, slip op. at 1 (2014); *Des Moines Cold Storage*, 358 NLRB 388, 389 (2012) (citing *Acme Industrial*, 385 U.S. at 438); *Dodger Theatricals Holdings*, 347 NLRB 953, 970 (2006); *Schrock Cabinet Co.,* 339 NLRB 182, 182 fn.6 (2003); *Shoppers Food Warehouse.*, 315 NLRB at 259. Indeed, a union is not required to 'prove up' the robustness of the grievance in question, even where the employer claims it is procedurally or legally flawed. See *Endo Painting Service*, supra (employer required to provide information requested regardless of whether the pending grievance was permitted under the parties' agreement), *Dodger Theatricals Holdings*, supra (in information case, it is not for the administrative law judge "to make a determination on the merits that Union did not establish a contract violation").

In this case, the identity of Respondent's customers and their contact information would be relevant to the Union's assessment of its grievance claims that Respondent had failed to recognize the Union at specific locations and/or had failed to provide the Union with notice of service-contract negotiations at any locations. The customer contracts themselves, to the extent that they revealed customer information and effective dates, would additionally allow the Union to assess the reliability of any information gleaned via the Respondent's customer lists. Thus, I find that the information sought by the Union was necessary to ascertain the nature, scope, and

extent of the alleged contract violations underlying the Union's March 23 grievance and therefore was relevant and necessary to its function as a collective-bargaining agent. See *SBC Midwest*, 346 NLRB 62 (2005) (union entitled to information reflecting extent of subcontracting relevant to the remedy for any contract violation); *Shoppers Food Warehouse*, 315 NLRB 258 (union entitled to information regarding employer's newly acquired non-union store to which union suspected employer intended to spin off its operations); *Island Creek Coal Co.*, 292 NLRB 480 (1989) (union entitled to information regarding subcontracting of work), enfd. 899 F.2d 1222 (6th Cir. 1990).

Respondent insists that, to resolve whether Respondent was obligated to provide information related to the March 23 grievance, I must determine whether the Union has in fact proven its majority support at the disputed locations. (See Resp. Br. at 13, 21) Essentially, Respondent is asking me to arbitrate the grievance itself, by finding that the Union has failed to prove its representative status pursuant to the BOMA Agreement's terms. But to determine whether the Union is entitled to the requested information, I need not decide whether a contractual violation exists. Instead, I find that, because the March 23 grievance asserts that Respondent is violating the contract by refusing to recognize all DMS employees performing work as described by the BOMA Agreement, the Union is entitled to information that would show the extent and scope of this alleged violation.

Respondent additionally argues that it should not be required to provide the customer contracts and lists sought by the Union to assist in its handling of the March 23 grievance unless and until an arbitrator finds that the BOMA Agreement in fact obligates Respondent to provide notice of new service-contract negotiations under its Section (G)(3). Essentially, what Respondent suggests is that the Union's grievance be subject to a preliminary vetting by an arbitrator before Respondent provides the Union with documents showing the extent and scope of the alleged violation. Respondent's desired result would run afoul of years of Board law following the Supreme Court's guidance in *Acme Industrial Co.*, supra, by having the Board acquiesce to an arbitrator's finding on the relevance of the requested information and thereby force the Union "to play a game of blind man's bluff" in its pursuit of the March 23 grievance.

Finally, Respondent argues that I am precluded from finding a violation based on its withholding the information related to the March 23 grievance, because this would amount to a determination that Respondent was, in fact, obligated to provide notice pursuant to Section (G)(3) of the BOMA Agreement. I disagree. Finding that the Union reasonably considered the sought-after information as relevant to *its position* on the meaning of Section (G)(3) is wholly different from agreeing that its position should ultimately prevail.[14] Thus, "whether or not" the BOMA Agreement is ever found to have been violated as Local 501 alleges, Respondent violated the Act by failing and refusing to provide the requested information. *Endo Painting Service,* 360 NLRB No. 61.

[14] Thus, unlike the cases cited by Respondent, finding a violation here does not, as Respondent suggests, necessarily involve 'choosing' an interpretation of the BOMA Agreement. (See R. Br. at 15 and cases cited therein).

2. The Safety Audits and Reports

a. Respondent Unreasonably Delayed in Providing Safety Audits and Reports For the Recognized Locations, in Violation of Sections 8(a)(5) and (1) of the Act

As noted, I have already found that Respondent's safety audits and reports relating to recognized locations to be presumptively relevant. However, I also find that Respondent, in response to the Union's request, provided all responsive documents in its possession. In this regard, while I found certain portions of Magann's testimony rehearsed and self-serving, his demeanor when testifying that he had provided "everything [Respondent] had in the file" was straight-forward and convincing (Tr. 238–39) However, this does not alter the fact that Respondent took nearly 5 months to provide the reports.

An employer is required to respond to union requests for relevant information "as promptly as possible." See, e.g., *Woodland Clinic*, 331 NLRB 735, 736 fn.5 (2000); *Samaritan Medical Center*, 319 NLRB 392, 398 (1995). In evaluating the promptness of an employer's response, the Board considers the complexity and extent of the information sought, its availability, and the difficulty in retrieving the information. *West Penn Power Co.,* 339 NLRB 585, 587 (2003), enfd. in relevant part 394 F.2d 233 (4th Cir. 2005). Presumably relevant information must be "provided within a reasonable time, or, if not provided, accompanied by a timely explanation." Id. at 597 (citing *FMC Corp.,* 290 NLRB 483, 489 (1988)).

Where the information sought is simple, close at hand and easily assembled, even a relatively short delay of 2 or 3 weeks may be unreasonable. See, e.g., *Capitol Steel & Iron Co.,* 317 NLRB 809, 813 (1995) (2-week delay unreasonable), enfd. 89 F.3d 692 (10th Cir. 1996); *Aeolian Corp.,* 247 NLRB 1231, 1244 (1980) (3-week delay unreasonable). Here, the Union sought presumptively relevant information which, by Magann's own admission, was contained within a single file. The Union made it clear precisely which documents it sought by providing Respondent with a sample; Respondent raised no concern over the confidentiality of the reports and provided no evidence that anything prevented it from responding to this request within a matter of weeks, if not days.[15] There is not a shred of evidence that Respondent's conduct was anything but straightforward delay.

While the Complaint contains no allegation that Respondent unreasonably delayed in providing safety audits and reports, I find that this unalleged conduct is closely related to the Complaint allegation that Respondent refused to provide this information, and additionally find that the issue of respondent's delay was fully litigated. See *Care Manor of Farmington*, 318 NLRB 330, 334 (1995) (where complaint alleged that employer, since date of union's request, has failed and refused to furnish the information requested, employer acted unlawfully by its delay in providing some of the information and its refusal to provide the rest); see also *American Benefit Corporation*, 354 NLRB 1039 (2010) (finding violation based on unalleged 5-month delay in providing information). In this regard, it is noteworthy that Respondent's sole witness, Magann, was actually asked whether Respondent intentionally delayed in responding to the Union's information requests, and he denied any such conduct. (Tr. 258)

[15] As noted, supra, although one of the safety audits Respondent did provide was marked "Confidential," Respondent has not raised any confidentiality defense with respect to the safety audits.

Because I construe the complaint as currently drafted as broad enough to cover Respondent's untimely furnishing of the presumably relevant audit reports, I find that Respondent violated the Act by unreasonably delaying in providing these documents.

b. Respondent Failed to Provide Safety Audits and Reports For the Disputed Locations, in Violation of Sections 8(a)(5) and (1) of the Act

I also find that the Union had demonstrated the relevance of the requested safety audits and reports for the disputed locations. As Ulloa explained, the safety audits and reports would reveal the locations at which DMS employs individuals who work within the job classifications set forth in the BOMA Agreement.[16] As such, the safety audits and reports are relevant to the Union's handling of its March 23 grievance, in that they would allow the Union to assess whether and, if so, to what extent, Respondent had violated the BOMA Agreement by refusing to recognize the Union with respect to such employees. Accordingly, even though the requested documents relate to work performed by individuals Respondent contends fall outside the Unit, the Union has demonstrated their relevance of this information to its duty to police Section I(G) of the BOMA Agreement. As such, I find that Respondent violated Sections 8(a)(5) and (1) of the Act by failing to provide these documents.

3. The Employee Evaluations

a. Respondent Unreasonably Delayed in Providing Employee Evaluations For the Recognized Locations, in Violation of Sections 8(a)(5) and (1) of the Act

As noted, the Union is presumptively entitled to information such as employee evaluations. There also is no question that Respondent was less than timely or straightforward in its response to the Union's request for such documents. Magann's meager explanation for waiting months to tell Ulloa that DMS had no responsive documents—"we went back and forth on quite a few things"—was unpersuasive.[17] Moreover, he offered no explanation whatsoever for later suggesting to Ulloa that Respondent's personnel files might contain the employee evaluations after all. Instead, at hearing, he reverted to his prior position that Respondent does not conduct evaluations.

[16] Although Respondent by its post-hearing brief claims that the Union sought "all audits for every DMS location" (i.e., including those outside of Los Angeles and Orange counties), the documentary evidence belies such a claim. By its very first request on March 23, the Union stated that it was requesting documents relating to employees covered by the BOMA Agreement (see GC 6); later, after Respondent provided audits related only to three locations, Ulloa reiterated that the Union's position was that the BOMA Agreement applied to all buildings within Los Angeles and Orange counties constructed as of its effective date. (GC 14).

[17] In its post-hearing brief, the General Counsel argues that Respondent violated the Act by unreasonably delaying in informing the Union that it had no employee evaluations. However, the Complaint alleges no such violation and, under similar circumstances, the Board has found fatal the General Counsel's failure to amend its complaint. See *Raleys Supermarkets and Drug Centers*, 349 NLRB 26, 28 (2007). I am constrained to follow that decision, and therefore decline to find a violation based on Respondent's failure to inform the Union that it had no employee evaluations.

Based on Magann's failure to explain, in credible fashion, either Respondent's delay or the contradictory positions it staked out in dealing with the Union on this issue, I do not credit his testimony that Respondent does not have any documents constituting "employee evaluations" for Unit employees. Indeed, Magann's invitation to the Union to inspect Respondent's personnel files, which only extended over 5 months after the Union's request, was premised on the possibility that responsive documents did in fact exist. Thus, to the extent that Respondent has admitted that there may be responsive documents contained within its personnel files, I find it violated the Act by not timely offering the Union the opportunity to search these files.[18]

b. Respondent Was Not Obligated to Provide Employee Evaluations for the Disputed Locations

I find that the General Counsel has failed to establish the relevance of the employee evaluations related to the disputed locations. In his communications with Magann on the subject, Ulloa indicated that the requested employee evaluations were relevant with respect to numerous sections of the BOMA Agreement, including those dealing with recognition, grievances and arbitrations. At hearing, however, no specific evidence was adduced on this subject, nor did the General Counsel address it in its post-hearing brief. Under the circumstances, I find it difficult to imagine what the Union may have reasonably believed to be the relevance of such documents (assuming they exist) in connection with its efforts to police Article I, Section G of the BOMA Agreement or any other representational purpose. Therefore, the Complaint allegation regarding employee evaluations, insofar as it concerns the disputed locations, is dismissed.

4. Respondent's Asserted Confidentiality Defense Lacks Merit

The Board has held that "[l]egitimate and substantial confidentiality and privacy claims will be upheld, but blanket claims of confidentiality will not." *Pennsylvania Power Co.*, 301 NLRB 1104, 1105 (1991) (footnote omitted); see also *Castle Hill Health Care Center,* 355 NLRB at 1183–84 (generalized confidentiality concern unavailing as an excuse for refusing to provide information). The Board recognizes that an employer's claim of confidentiality must be balanced against the union's need for the information as it acts as the representative of its employee-members. *Midwest Division – MMC, LLC*, 362 NLRB No. 193, slip op. at 3 (2015) (citing *Kaleida Health, Inc.*, 356 NLRB 1373, 1378-79 (2011) and *Detroit Edison Co. v. NLRB*, 440 U.S. at 318–19).

In order to trigger this balancing test, however, an employer must first timely raise and prove that it has a legitimate confidentiality claim. *Detroit Newspaper Agency*, 317 NLRB at 1072–74 . As the Board has held, an employer "must *establish* confidentiality as a defense, not merely raise a naked confidentiality claim," *Lasher Service Corp.*, 332 NLRB 834, 834 (2000); merely stating that information is confidential without explanation is not sufficient. *Watkins Contracting, Inc.*, 335 NLRB 222, 226 (2001) (citation omitted). "Where the employer fails to demonstrate a legitimate and substantial confidentiality interest, the union's right to the information is effectively unchallenged, and the employer is under a duty to furnish the information." Id. (citing *A-Plus Roofing*, 295 NLRB 967, 970 (1989)).

[18] Although not alleged in the Complaint, I find that this delay violation, under the standard for de facto amendments, discussed supra, is closely related to the Complaint allegations and was fully litigated.

I find that Respondent has failed to meet its burden in demonstrating a legitimate confidentiality interest in its customer contracts and lists. At hearing, Respondent's sole witness, Magann, identified several categories of information he claimed that Respondent *currently* considers to be potentially dangerous in the hands of its competitors. However, at no time during his testimony did he indicate that the concerns he described were, in fact, what motivated Respondent to withhold the requested information.[19] I find that Magann's overall demeanor during this portion of his testimony suggested that he was highly coached and his testimony carefully tailored to avoid addressing this very subject.[20] As a result, Respondent failed to adduce any evidence (credible or otherwise) that it actually harbored legitimate concerns about confidentiality at the time it responded to the Union's information requests with generic sound-bites such as "Confidential Business Information" and "proprietary information."

A further indication that Respondent was not, in fact, concerned about the Union's receipt of documents designated as "confidential" is the lack of evidence of any practice or procedure employed by Respondent for guarding the confidentiality of these documents. Indeed, at least one such document (a safety inspection report) was actually provided by Respondent in response to the Union's request for safety audits and entered into the record, without any confidentiality objection by Respondent. (See GC 17 at 11–18) Indeed, even considering Magann's testimony at face value, there is no evidence that Respondent has ever been concerned about the Union mishandling its information, but only that Respondent's customers—none of whom testified—"may" want to keep their ownership information from the Union.

Based on the record as a whole, I conclude that Respondent failed to demonstrate that it had a legitimate concern regarding confidentiality. See, e.g., *Columbia Memorial Hospital*, 363 NLRB No. 4, slip op. at *9 (2015) (finding respondent violated the Act where it failed to establish that its contracts with nursing agencies were confidential); *National Extrusion & Mfg. Co.*, 357 NLRB 127, 157, fn.31 (2011) (finding respondent violated the Act where it failed to establish that names of current or past customers were confidential).

I also note that, to the extent that Respondent's unexplained references to "confidential" and "proprietary" information triggered an obligation to bargain an accommodation over its claimed confidentiality concerns, Respondent failed to satisfy its burden in this regard. It is undisputed that Respondent never raised the subject of potential accommodations with the Union, and never made any effort to bargain an accommodation of such concerns. Nor is there

[19] Moreover, even considering Magann's self-serving testimony at face value, Respondent failed to demonstrate that DMS has ever been concerned that the Union would mishandle its information, but only that it could be dangerous in the hands of Respondent's competitors. While Magann testified that Respondent's customers "may" want to keep their ownership information from the Union, I regard this pure conjecture on his part.

[20] In this regard, it is notable that the vast majority of the questions put to Magann on direct examination on this subject were phrased in the present tense (i.e., "Why does DMS not want to provide [its customer contracts] to the Union?"; "Why do you not want to provide your financial information?"). Tellingly, even when Respondent's counsel asked Magann, in leading fashion, whether he had—at some unspecified time in the past—considered parts of the customer contracts confidential, Magann responded in the present tense: "I do consider [them] confidential." See Tr. 253–56.

any evidence that the Union has ever been unreliable in respecting such accommodations (in the form of a confidentiality agreement, for example). Under the circumstances, Respondent's failure to test the Union's willingness to hold the relevant information confidential demonstrates that Respondent "raised confidentiality concerns as a reason to say no, not as concern that it sought to accommodate." *National Extrusion & Mfg. Co.*, 357 NLRB at 158; see also *Reiss Viking*, 312 NLRB at 622 fn.4.

Respondent argues that, should it be found to have violated the Act by refusing to provide the Union with its customer contracts and lists, any remedial order should require Respondent to provide these materials only after bargaining in good faith over a protective order addressing its confidentiality concerns. Because I find that Respondent failed to meet its burden in establishing that the information in question was, in fact, considered confidential, I decline to include such a provision in my recommended order. See *Watkins Contracting, Inc.*, 335 NLRB at 226 (citing *Lasher Service Corp.*, 332 NLRB 834).

III. CONCLUSIONS OF LAW

1. Respondent DMS Facility Services is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. International Union of Operating Engineers, Local 501, AFL–CIO is a labor organization within the meaning of Section 2(5) of the Act with 9(a) status under the Act.

3. The following employees of Respondent (Unit) constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> Individuals employed within the Counties of Los Angeles and Orange, CA in the following classifications: Chief Engineer, Chief Operating Engineer, Assistant Chief Engineer, Lead Engineer, One-Man Plant, Certified Engineer, Non-Certified Engineer, Apprentice Engineer and Maintenance Attendant, who perform work as described in the Building Owners and Managers Association of Greater Los Angeles, Inc. and Local 501, effective from November 1, 2011 until October 31, 2016.

4. At all material times, Respondent has recognized the Union as the designated exclusive collective-bargaining representative of the Unit employees employed at the following locations in California: 10889 Wilshire Blvd., Los Angeles; 475 Anton Blvd., Costa Mesa; 300 Corporate Pointe, Culver City; 700 North Alameda, Los Angeles; 1500 Quail St., Newport Beach; 345 Foothill Rd., Beverly Hills; and 600 Wilshire Blvd., Los Angeles (the recognized locations).

5. At all material times, the Union has demanded recognition as the designated exclusive collective-bargaining representative of Unit employees employed by Respondent at all locations, other than the recognized locations, throughout the Counties of Los Angeles and

Orange in the State of California (the disputed locations). At all material times, Respondent has refused to grant such recognition.

6. Respondent has violated Section 8(a)(5) and (1) of the Act by failing and refusing to supply the following information to the Union:

(a) Copies of audits and/or annual reports that include all man hours for engineering services at each of the disputed locations.
(b) Copies of all Contracts between Respondent and its customers, suppliers, and contractors at each of the disputed locations.
(c) Any and all Customer Lists, including company names, address, phone number and contact person, at each of the disputed locations.

7. Respondent has violated Section 8(a)(5) and (1) of the Act by unreasonably delaying its provision to the Union of copies of audits and/or annual reports that include all man hours for engineering services at each of the recognized locations.

8. The unfair labor practices, described above, affect commerce within the meaning of Section 2(6) and (7) of the Act.

IV. REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, I shall recommend that Respondent be ordered to supply the requested information, set forth above, to the Union and additionally be ordered to make its personnel files for its recognized locations available to the Union for review and copying.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended:[21]

V. ORDER

The Respondent, DMS Facilities Services, Inc., its officers, agents, successors and assigns, shall

1. Cease and desist from:

(a) Failing and refusing to timely and completely supply information to the Union that is relevant and necessary to the Union's performance of its duties as the exclusive collective-bargaining representative of its employees in the following appropriate unit:

[21] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

Individuals employed within the Counties of Los Angeles and Orange, CA in the following classifications: Chief Engineer, Chief Operating Engineer, Assistant Chief Engineer, Lead Engineer, One-Man Plant, Certified Engineer, Non-Certified Engineer, Apprentice Engineer and Maintenance Attendant, who perform work as described in the Building Owners and Managers Association of Greater Los Angeles, Inc. and Local 501, effective from November 1, 2011 until October 31, 2016.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Furnish to the Union, in a timely and complete manner, the following information:

1. Copies of audits and/or annual reports that include all man hours for engineering services at each of the disputed locations.
2. Copies of all contracts between Respondent and its customers, suppliers, and contractors at each of the disputed locations.
3. Any and all customer lists, including company names, address, phone number and contact person, at each of the disputed locations.

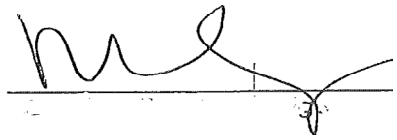
(b) Within 14 days after service by the Region, post at its California job locations at 10889 Wilshire Blvd., Los Angeles; 475 Anton Blvd., Costa Mesa; 300 Corporate Pointe, Culver City; 700 North Alameda, Los Angeles; 1500 Quail St., Newport Beach; 345 Foothill Rd., Beverly Hills; and 600 Wilshire Blvd., Los Angeles, copies of the attached notice marked "Appendix."[22] Copies of the notice, on forms provided by the Regional Director for Region 31, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since April 9, 2015.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 31 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

[22] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

It is further ordered that the Complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated: Washington, D.C. March 18, 2016



Mara-Louise Anzalone
Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES
Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefits and protection
Choose not to engage in any of these protected activities

WE WILL NOT fail and refuse to timely and completely supply information to the Union that is relevant and necessary to the Union's performance of its duties as the exclusive collective-bargaining representative of its employees in the following appropriate unit:

> Individuals employed within the Counties of Los Angeles and Orange, CA in the following classifications: Chief Engineer, Chief Operating Engineer, Assistant Chief Engineer, Lead Engineer, One-Man Plant, Certified Engineer, Non-Certified Engineer, Apprentice Engineer and Maintenance Attendant, who perform work as described in the Building Owners and Managers Association of Greater Los Angeles, Inc. and Local 501, effective from November 1, 2011 until October 31, 2016.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL furnish to the Union, in a timely and complete manner, the following information:

1. Copies of audits and/or annual reports that include all man hours for engineering services at each of the disputed locations.
2. Copies of all contracts between Respondent and its customers, suppliers, and contractors at each of the disputed locations.
3. Any and all customer lists, including company names, address, phone number and contact person, at each of the disputed locations.

DMS FACILITY SERVICES
(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

11500 West Olympic Boulevard, Suite 600
Los Angeles, California 90064–1824
Hours: 8:30 a.m. to 5 p.m.
310–235–7351

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/31-CA-151920 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 310–235–7424.